IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 879 OF 2002

Padmanabha Mohan Reddi. ... Appellant.
Versus.
Purushottam Mohan Reddy
and others. ... Respondents.

Shri A.A.Kumbhakoni for the Appellant.

Shri M.R.Phal for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 17th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. There is a concurrent finding of fact recorded by both the Courts below that the deceased father of the Appellant has executed a will under which the Appellant has been excluded. The findings of fact recorded by both the Courts below is that the suit property was self acquired property of the father of the Appellant.

2. The learned Counsel for the Appellant submitted that it is borne out from the evidence on record that the Appellant/Plaintiff assisted his father in his business for about 12 years and the acquisition of the immoveable property was from the income earned out of the business. He, therefore, submitted that it is obvious that the character of property can never be self acquired property of the father.

3. I have considered the submissions. It is not the case made out by the Appellant/Plaintiff that the business in which he was working with the father was a joint family business. There is no specific pleading in that behalf in the plaint. The case is tried to be made out at the time of recording evidence that the immoveable property was acquired out of the profits earned from the said business.

4. Apart from the fact that there are concurrent findings of fact recorded by the Courts below that the immoveable property was a self acquired property of the father, no specific case has been made out in the plaint by the Appellant/Plaintiff that the business carried on by the father was a joint family business and that the acquisition was from the profits earned out of the said business.

5. As regards the execution of the will, there are concurrent findings of facts which are based on evidence on record. No substantial question arises in the Appeal. The Appeal is accordingly dismissed with no order as to costs.

Judge.